"thinks it expedient in the interest of justice" to order a copy to be supplied. This expression has been lucidly explained by Taylor J. at page 58 in *Muthusamy* v. *Public Prosecutor*[1] and we reproduce the relevant passage below:

"The proper way to apply the sections is this. On the request of either side, the court reads the former statement. If there is no serious discrepancy, the court so rules and no time is wasted. The first necessity is to read it with the confident expectation that it will be different from the evidence but looking judicially to see whether the difference really is so serious as to suggest that the witness is unreliable.

Differences may be divided into four classes:—

(a) Minor differences, not amounting to discrepancies;

(b) Apparent discrepancies;

(c) Serious discrepancies;

(d) Material contradications.

Minor differences are attributable mainly to differences in interpretation and the way in which the statement was taken and sometimes to differences in recollection. A perfectly truthful witness may mention a detail on one occasion and not remember it on another. A mere omission is hardly ever a discrepancy. The police statement is usually much briefer than the evidence. Both the statement and the evidence are usually narratives reduced from question and answer. The witness is not responsible for the actual expressions used in either, and all the less so where he does not speak English.

If the police statement gives an outline of substantially the same story there being no apparently irreconcilable conflict between the two on any point material to the issue, the Magistrate should say at once, 'The difference is not such as to affect his credit' and hand the statement back.

If, however, the difference is so material as probably to amount to a discrepancy affecting the credit of the witness, the court may permit the witness to be asked whether he made the alleged statement. If he denies having made it, then either the matter must be dropped or the document must be formally proved, by calling the writer or, if he is not available, by proving in some other way that the witness did make the statement.

If the witness admits making the former statement, or is proved to have made it, then the two conflicting versions must be carefully explained to him, preferably by the court, and he must have a fair and full opportunity to explain the difference. If he can, then his credit is saved, though there may still be doubt as to the accuracy of his memory. This procedure is cumbersome and slow and therefore should not be used unless the apparent discrepancy is material to the issue."

We do not think that the prosecution should supply copies of the police statement direct to the defence without the intervention of the court — because of the peculiar circumstances prevailing in this country. Malaysia is a small country, with a small population, and Malaysians are easily scared; they are reluctant to be involved. If a crime is committed under their nose they look the other way, see, hear and say nothing, do little or nothing to help identify — let alone — arrest the offender, and yet complain that the police do not catch criminals and that courts are bedazzled by technicalities. If the prosecution is obliged to supply copies of police statements to the defence without the intervention of the court, the defence may be tempted to ask for, and the prosecution will be obliged to supply, copies of every statement in the police investigation file, and Malaysians will be more reluctant to come forward with evidence to incriminate their fellows.

To sum up, the answer to the two questions as limited during the course of arguments is this — when a prosecution witness is being cross-examined, and the defence proposes to impeach his credit, the court, should, on the request of the defence, refer to his police statement and may then, if the court thinks it expedient in the interest of justice, direct the defence to be supplied with a copy.

Our conclusion is not inconsistent with judgment of Syed Othman F.J. in *Husdi* v. *Public Prosecutor*,[2] out of which arises this reference, which dealt with the wider question whether or not the defence is entitled in advance of the trial to copies of police statements of prosecution witnesses, and which he answered in the negative, which answer was not challenged before us.

Questions answered.

Solicitors: *Sri Ram & Co.*

K. MURUGESU v. NADARAJAH

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat & Syed Othman F.JJ.) March 13 & 31, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 205 of 1978]

Contract — Consideration — Mutual Promises — Contracts Act, 1950, s. 24.

In this case the appellant had agreed to sell a house to the respondent for $26,000. The respondent obtained an order of specific performance of the agreement and the appellant appealed. At the appeal, counsel for the appellant submitted that there was no consideration for the offer to sell and the agreement was void as being without consideration.

Held: it is clear from illustration (a) to section 24 of the Contracts Act, 1950, that consideration can consist of mutual promises and the contention that there was no consideration in this case was entirely unfounded.

Cases referred to:-

(1) *Mohamed Syedol Ariffin* v. *Yeoh Ooi Gark* [1916] 2 A.C. 575; 1 M.C. 165.

(2) *Harrison* v. *Cage* (1698) 12 Mod. 214.

FEDERAL COURT.

S.K. Lingam for the appellant.

S. Selvaratnam for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): This is an appeal from the decision of the High Court to order specific performance of an agreement in writing by which the appellant agreed to sell his house to the respondent who was at all times his tenant but who being greatly desirous of owning the house in which he had resided for so long had pestered the landlord into selling it to him.

The agreement is on a scrap of paper on which the appellant had written:

"2nd January, 1972.

I agree to sell my house No. 71 erected on Lot 7612 held under C.T. 16432 to Mr. A. Nadarajah, the present tenant, of the house at $26,000 (Dollars twenty six thousand only) within three months from date.

Sgd.
Registered Owner."

Nothing turned on the communication of the offer to sell from the appellant to the respondent or on the respondent's acceptance and communication of that acceptance to him. There was therefore an offer and an acceptance of that offer to constitute a binding contract. But at the appeal, his counsel (who did not appear in the court below) took one short point. He submitted that there was no consideration for the offer to sell and the agreement was void as being without consideration. Having said so in rather fewer words than that we have managed to note down his submission, he then sat down. We were not ungrateful, that in at least this one instance we had been spared being taken through fundamental legal principles and elementary legal procedure which would seem to be our lot nowadays.

The answer to the appellant's contention lies in illustration (a) to section 24 of the Contracts Act, 1950 (Revised, Act 136). Now, as was said in the Privy Council in *Mohamed Syedol Ariffin* v. *Yeoh Ooi Gark*[1]:

"Illustrations appended to sections of a statute should be accepted if that can be done, as being of relevance and value in construing the text; they should only be rejected as repugnant to the section as the last resort of construction."

This particular illustration is in these words:

"(a) *A* agrees to sell his house to *B* for $10,000. Here, *B's* promise to pay the sum of $10,000 is the consideration for *A's* promise to sell the house and *A's* promise to sell the house is the consideration for *B's* promise to pay the $10,000. These are lawful considerations."

The agreement must be seen to be a case of executory consideration. A promise is made by one party in return for a promise made by the other; in such a case each promise is the consideration for the other. "A promise made without a consideration is void. But where there is a promise against a promise, one promise is consideration of the other because each may have his action against the other for non-performance;" *per* Holt C.J. in *Harrison* v. *Cage*.[2] The rule that consideration can consist of mutual promises is now too well established to be questioned.

Counsel for the appellant was therefore right. The question of consideration was of a very elementary nature in a matter of an offer to sell and acceptance of that offer but his contention that there was no consideration was entirely unfounded.

The appeal was dismissed with costs. We did not find it necessary to call on counsel for the respondent.

Appeal dismissed.

Solicitors: *S.K. Lingam & Co.; Selva & Co.*

NG YIK SENG & ANOR. v. PERWIRA HABIB BANK MALAYSIA BHD.

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat & Syed Othman F.JJ.) March 12 & 31, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 153 of 1979]

Practice and Procedure — Application for summary judgment — Leave to defend — Action on guarantee of overdraft — Overdraft secured by legal charge — Charge not realised — R.S.C. 1957, O. 14 — Evidence Act, 1950, s. 73.

Banking — Overdraft — Secured by charge — Guarantee — Action on guarantee — Realisation of charge.

In this case the respondent had granted an overdraft to a company, for which the appellants and two other directors of the company stood guarantee in their personal capacities. The overdraft was secured by a charge on a piece of property. When the overdraft was not repaid, the respondent brought an action against the guarantors. Subsequently they applied for summary judgment against the appellants. The appellants denied that they executed the guarantee. The Senior Assistant Registrar allowed the application but her decision was reversed by the High Court which gave conditional leave to defend, on payment of the sum of $125,000 into Court. There were great variations in the signatures of the appellants not only in the documents but in the specimens supplied by them. The appellants appealed and the respondent cross-appealed.

Held: (1) there was a triable issue in this case and the appellants were rightly given leave to defend;

(2) in view of the fact that the charge could be realised to meet the overdraft, the present case might turn out to be a useless piece of litigation and in the circumstances the appellants should be given unconditional leave to defend.

Cases referred to:-

(1) *Webster* v. *Bakewell R.D.C.* (No. 2) (1916) 115 L.T. 678.

(2) *Metropolitan Bank* v. *Pooley* (1885) 10 App. Cas. 210, 221.

(3) *Riches* v. *Director of Public Prosecutions* [1973] 1 W.L.R. 1019, 1027; [1973] 2 All E.R. 935, 942.

FEDERAL COURT.

Izabella de Silva for the appellants.

M. Chang for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): The respondent is a bank and in respect of an overdraft account granted to Eternal Graphie Reproduction Sdn. Bhd. (the Company) required and obtained four guarantors jointly and severally to guarantee the repayment of the money advanced on the overdraft. The four directors were also the directors of the Company but their guarantee was personal. At the relevant time the account stood at $251,091.64 inclusive of interest. The respondent made demand for the repayment of this overdraft sum from the guarantors and when they failed to make good the sum advanced, took out the writ in this action against all 4 guarantors for the repayment of this sum.

On April 13, 1979, the respondent made an Order 14 application against the present appellants. No action was taken against the other 2 guarantors, we believe, because they had been previously adjudicated bankrupts.

The appellants resisted the application by an affidavit in which one ground and one ground alone